IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15195 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HERIK JOHN RODRICKS KHRISTI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15195 of 2004

MS BUNNA DUTTA FOR MR AR SHAIKH for Petitioner

MS HANSA PUNANI, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 27/12/2004

ORAL JUDGEMENT

Heard Ms.Bunna Dutta, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP, appearing on behalf of the respondents.

2. The present petition is filed under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 30th April, 2004, passed by the Police Commissioner, Surat City, Surat, under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'). The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act.

3. While recording subjective satisfaction to the fact that the bootlegging activities of the petitioner is prejudicial to the maintenance of public order is mainly based on two aspects. The first aspect is that of registration of an offence by Chowk Bazar Police Station, Surat, being C.R.No.63 of 2004 on 4th March, 2004, punishable under the Bombay Prohibition Act, and the second is the fact stated by two witnesses in their respective statements recorded by the sponsoring authority on 9th April, 2004, and 10th April, 2004, respectively, who have claimed privilege of secrecy.

4. The order of detention under challenge dated 30th April, 2004, is assailed on various grounds mentioned in the memo of petition. However, the learned counsel has concentrated her arguments mainly on the two points. The first submission is that the detaining authority has erred in recording subjective satisfaction to the effect that the involvement of the present petitioner in one solitary offence is a bootlegging activity within the meaning of Sec.2(b) of the Act. She has rightly placed reliance on the ratio of the decision of this Court in the case of Sohanlal Surajaram Visnoi Vs. State of Gujarat reported in (2003) 2 GHJ 490 particularly para 4 and 7 which reads as under:

"para.4 Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Article 22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a

preventive detention law is detained, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under preventive detention law.

"para 7 At the outset, it may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in toto. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "public order" and which needs to be controlled and curbed preventively. There must be convincing reasons and justifiable material that the impugned activity or action is likely to cause adverse and prejudicial impact on the maintenance of "public order". Emphasis is laid on "Public order" and not "law and order" which belonds to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the PASA Act, and detailed factual matrix of each case the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "public order" or adverse to the maintenance of "public order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "public order" and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, and in this context, in exercise of the powers under Article 226 of the Constitution of India, this Court is left with no alternative in this group of petitions, but to quash and set aside the orders in each matter, with the result that all the petitions are required to be allowed while quashing and setting aside the detention orders passed against detenus in this group."

5. It is true that two statements are there in present case, however, these statements are not inspiring confidence, and it is relevant to note that these statements have been recorded after lapse for more than one month from the date of registration of offence is concerned.

6. The second point of argument advanced by learned counsel Ms.Banna Dutta is that, consistently this Court has considered the date of registration of last offence as relevant date as and when the Court is called upon to appreciate the submission of this nature. The order of detention is of 30th April, 2004. So the delay of about one month and 26 days caused in passing the detention order in case of a solitary offence ought to have been explained by the authorities to the satisfaction of the court, and in absence of such explanation of delay caused would go to the root of the validity of the order. There is force in both the arguments pressed into service by the petitioner, and therefore the petition deserves to be allowed.

7. In view of the above, the present petition is allowed. The order of detention dated 30th April, 2004, passed by the respondent No.2 herein is quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(C.K.Buch, J.)

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